REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed September 20, 2007. Claims 1-2, 4-13, 15-21, and 23-24 remain pending in the present application. Reconsideration and allowance of the pending claims are respectfully requested.

1. Response to Objection of the Title

The title has been objected to because the title is allegedly not descriptive to which the claims are descriptive. The Examiner suggested a new title "Method for Determining Information Technology Commodity Pricing." However, the claims are not limited to covering Information Technology Commodity Pricing. Therefore, the title has been replaced with the new title "A Method for Determining Commodity Pricing within an Industry" which the Applicant contends is descriptive of the claimed subject matter. Withdrawal of the objection is respectfully requested.

2. Response to Rejection of Claims Under 35 U.S.C. §103(a)

Claims 1-2, 4-7, 11-13, 15-18, and 23-24 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Takriti* (U.S. Patent No. 6,021,402) in view of *Pitchford* (U.S. Patent No. 6,327,541) in further view of *Rose* (U.S. Patent No. 5,963,920). Claims 8-10 and 19-21 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over *Takriti* (U.S. Patent No. 6,021,402) in view of *Pitchford* (U.S. Patent No. 6,327,541) in further view of *Rose* in further view of Official Notice.

a. Independent Claim 1

As presented in independent claim 1, Applicant claims:

> A method of determining a price at which a supplier provides a commodity to a customer, the method being performed by the supplier and comprising:
>
> ***(a) characterizing, by the supplier, nature of growth of the customer's usage of the commodity;***
>
> (b) receiving information from the customer specifying the commodity required;
>
> (c) receiving notification of the use of a quantity of the commodity by the customer; and
>
> ***(d) determining, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used by the customer, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price, wherein, if usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer.***

(Emphasis added).

Applicant respectfully submits that independent claim 1 is allowable for at least the reason that *Takriti* in view of *Pitchford* in further view of *Rose* does not disclose, teach, or suggest at least "characterizing, by the supplier, nature of growth of the customer's usage of the commodity" and "determining, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used by the customer, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price, wherein, if usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer," as recited in claim 1.

For example, *Takriti* describes that a schedule of operation for an electrical power generating unit or plant is determined by considering forecasts of how much load is to be placed on the plant by customers; physical and operational properties of power generating units; predictions of trading prices for electrical power; fuel prices and its availability that is used by power generating units to produce electrical power. *See* col. 7, lines 19-35. Based on this information, an operating schedule is produced for a power generating unit telling a unit manager how much and what type of fuel to use and how much to burn each hour of the week. "What distinguishes our tool is that it allows the user to incorporate risk, through predictions of the load and fuel prices, and uses these predictions to create optimal schedules." *See* col. 8, lines 43-65.

Therefore, *Takriti* describes a system or process provided by a supplier that computes an operational schedule for the supplier based on an analysis of fuel consumed by the supplier's plant, prices at which power may be sold from the supplier's plant, and load requirements placed on the supplier's plant. In this analysis, it is noted that a characterization of a customer's usage of power supplied by the supplier is not made; a determination of a price for a quantity of power requested by a customer is not made; and a level of commercial risk is not determined for a customer which is a basis for determining the price for a quantity of power specified by the customer.

Accordingly, *Takriti* fails to teach or suggest at least "characterizing, by the supplier, nature of growth of the customer's usage of the commodity" and "determining, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used by the customer, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an

industry average price for the commodity at the time of determination of the price, wherein, if usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer," as recited in claim 1.

With regard to *Pitchford*, it describes an electronic energy management system that allows a customer or user to view his or her energy usage over a communication network. Accordingly, *Pitchford* individually or in combination with *Takriti* fails to teach or suggest at least "characterizing, by the supplier, nature of growth of the customer's usage of the commodity" and "determining, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used by the customer, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price, wherein, if usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer," as recited in claim 1. Therefore, *Pitchford* does not remedy the deficiencies of *Takriti.*

With regard to *Rose*, it discloses a method of inventory control using electronic sensors so that a supplier is provided up to the minute stock levels of the supplier's inventory. For example, *Rose* describes that the status of a storage rack for a supplier is monitored and provided to the supplier which enables the supplier to determine the status of its inventory and whether the supplier should reorder supplies to restock its inventory. *See* col. 2, lines 39-52, col. 5, lines 30-49, and col. 7, lines 1-18. As such, *Rose* does not disclose that a customer's usage of commodities are used by a supplier

to determine the pricing of a commodity provided by the supplier to the customer of the supplier. Rather, *Rose* describes that a supplier monitors its own inventory levels so that it may maintain inventory levels above a desired level. Accordingly, *Rose* individually or in combination with *Pitchford* and *Takriti* fails to teach or suggest at least "characterizing, by the supplier, nature of growth of the customer's usage of the commodity" and "determining, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used by the customer, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price, wherein, if usage monitoring indicates that the customer has a need for more or less of the commodity, the method further comprises effecting provision of more or less of the commodity from the supplier to the customer," as recited in claim 1. Therefore, *Rose* does not remedy the deficiencies of *Pitchford and Takriti.*

For at least these reasons, claim 1 is not obvious under the proposed combination of *Takriti* in view of *Pitchford* in further view of *Rose*, and the rejection should be withdrawn.

b. Claims 2, 4-7, and 11

Dependent claims 2, 4-7, and 11 (which depend from independent claim 1) are allowable as a matter of law for at least the reason that the dependent claims 2, 4-7, and 11 contain all the features of allowable independent claim 1. *See, e.g., In re Fine*, 837

F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

Also with regard to the findings of Official Notice, Applicant restates their objections to these findings, as was addressed in a previous response.

c. Independent Claim 12

As presented in independent claim 12, Applicant claims:

> A computer-readable storage medium for storing a computer program operable, when executed by a computer, to determine a price at which a supplier provides a commodity to a customer, the computer program being operable to:
> ***(a) receive, by the supplier, input characterising nature of growth of the customer's usage of the commodity;***
> (b) receive, by the supplier, input specifying the commodity required by the customer;
> (c) receive, by the supplier, input comprising notification of the use of a quantity of the commodity by the customer; and
> ***(d) determine, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time, wherein, if usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer.***

(Emphasis added).

Applicant respectfully submits that independent claim 12 is allowable for at least the reason that *Takriti* in view of *Pitchford* in view of *Rose* does not disclose, teach, or suggest at least to "receive, by the supplier, input characterising nature of growth of the customer's usage of the commodity" and "determine, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the

customer's usage of the commodity, and an industry average price for the commodity at the time, wherein, if usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer," as recited in claim 12.

For example, *Takriti* describes that a schedule of operation for an electrical power generating unit or plant is determined by considering forecasts of how much load is to be placed on the plant by customers; physical and operational properties of power generating units; predictions of trading prices for electrical power; fuel prices and its availability that is used by power generating units to produce electrical power. *See* col. 7, lines 19-35. Based on this information, an operating schedule is produced for a power generating unit telling a unit manager how much and what type of fuel to use and how much to burn each hour of the week. "What distinguishes our tool is that it allows the user to incorporate risk, through predictions of the load and fuel prices, and uses these predictions to create optimal schedules." *See* col. 8, lines 43-65.

In other words, *Takriti* describes a system or process provided by a supplier that computes an operational schedule for the supplier based on an analysis of fuel consumed by the supplier's plant, prices at which power may be sold from the supplier's plant, and load requirements placed on the supplier's plant. In this analysis, it is noted that a characterization of a customer's usage of power supplied by the supplier is not made; a determination of a price for a quantity of power requested by a customer is not made; and a level of commercial risk is not determined for a customer which is a basis for determining the price for a quantity of power specified by the customer.

Accordingly, *Takriti* fails to teach or suggest at least to "receive, by the supplier, input characterising nature of growth of the customer's usage of the commodity" and "determine, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time, wherein, if usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer," as recited in claim 12.

With regard to *Pitchford*, it describes an electronic energy management system that allows a customer or user to view his or her energy usage over a communication network. Accordingly, *Pitchford* individually or in combination with *Takriti* fails to teach or suggest at least to "receive, by the supplier, input characterising nature of growth of the customer's usage of the commodity" and "determine, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time, wherein, if usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer," as recited in claim 12. Therefore, *Pitchford* does not remedy the deficiencies of *Takriti.*

With regard to *Rose*, it discloses a method of inventory control using electronic sensors so that a supplier is provided up to the minute stock levels of the supplier's

inventory. For example, *Rose* describes that the status of a storage rack for a supplier is monitored and provided to the supplier which enables the supplier to determine the status of its inventory and whether the supplier should reorder supplies to restock its inventory. *See* col. 2, lines 39-52, col. 5, lines 30-49, and col. 7, lines 1-18. As such, *Rose* does not disclose that a customer's usage of commodities are used by a supplier to determine the pricing of a commodity provided by the supplier to the customer of the supplier. Rather, *Rose* describes that a supplier monitors its own inventory levels so that it may maintain inventory levels above a desired level. Accordingly, *Rose* individually or in combination with *Pitchford* and *Takriti* fails to teach or suggest at least "receive, by the supplier, input characterising nature of growth of the customer's usage of the commodity" and "determine, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time, wherein, if usage data indicates that the customer has a need for more or less of the commodity, the program is operable to effect provision of more or less of the commodity from the supplier to the customer," as recited in claim 12. Therefore, *Rose* does not remedy the deficiencies of *Pitchford and Takriti.*

For at least these reasons, claim 12 is not obvious under the proposed combination of *Takriti* in view of *Pitchford* in further view of *Rose*, and the rejection should be withdrawn.

d. Claims 13 and 15-21

Dependent claims 13 and 15-21 (which depend from independent claim 12) are allowable as a matter of law for at least the reason that the dependent claims 13 and 15-21 contain all the features of allowable independent claim 12. *See, e.g., In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Accordingly, the rejection to these claims should be withdrawn.

Also with regard to the findings of Official Notice, Applicant restates their objections to these findings, as was addressed in a previous response.

e. Independent Claim 23

As presented in independent claim 23, Applicant claims:

> A price determination device comprising a processor operable to implement a method of determining a price at which a supplier provides a commodity to a customer, the method comprising:
> ***(a) characterizing, by the supplier, nature of growth of the customer's usage of the commodity;***
> (b) receiving information from the customer specifying the commodity required;
> (c) receiving notification of the use of a quantity of the commodity by the customer; and
> ***(d) determining, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price.***

(Emphasis added).

Applicant respectfully submits that independent claim 23 is allowable for at least the reason that *Takriti* in view of *Pitchford* in view of *Rose* does not disclose, teach, or suggest at least "characterizing, by the supplier, nature of growth of the

customer's usage of the commodity" and "determining, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price," as recited in claim 23.

For example, *Takriti* describes that a schedule of operation for an electrical power generating unit or plant is determined by considering forecasts of how much load is to be placed on the plant by customers; physical and operational properties of power generating units; predictions of trading prices for electrical power; fuel prices and its availability that is used by power generating units to produce electrical power. *See* col. 7, lines 19-35. Based on this information, an operating schedule is produced for a power generating unit telling a unit manager how much and what type of fuel to use and how much to burn each hour of the week. "What distinguishes our tool is that it allows the user to incorporate risk, through predictions of the load and fuel prices, and uses these predictions to create optimal schedules." *See* col. 8, lines 43-65.

In other words, *Takriti* describes a system or process provided by a supplier that computes an operational schedule for the supplier based on an analysis of fuel consumed by the supplier's plant, prices at which power may be sold from the supplier's plant, and load requirements placed on the supplier's plant. In this analysis, it is noted that a characterization of a customer's usage of power supplied by the supplier is not made; a determination of a price for a quantity of power requested by a customer is not made; and a level of commercial risk is not determined for a customer which is a basis for determining the price for a quantity of power specified by the customer.

Accordingly, *Takriti* fails to teach or suggest at least "characterizing, by the supplier, nature of growth of the customer's usage of the commodity" and "determining, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price," as recited in claim 23.

With regard to *Pitchford*, it describes an electronic energy management system that allows a customer or user to view his or her energy usage over a communication network. Accordingly, *Pitchford* individually or in combination with *Takriti* fails to teach or suggest at least "characterizing, by the supplier, nature of growth of the customer's usage of the commodity" and "determining, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price," as recited in claim 23. Therefore, *Pitchford* does not remedy the deficiencies of *Takriti.*

With regard to *Rose*, it discloses a method of inventory control using electronic sensors so that a supplier is provided up to the minute stock levels of the supplier's inventory. For example, *Rose* describes that the status of a storage rack for a supplier is monitored and provided to the supplier which enables the supplier to determine the status of its inventory and whether the supplier should reorder supplies to restock its inventory. *See* col. 2, lines 39-52, col. 5, lines 30-49, and col. 7, lines 1-18. As such, *Rose* does not disclose that a customer's usage of commodities are used by a supplier

to determine the pricing of a commodity provided by the supplier to the customer of the supplier. Rather, *Rose* describes that a supplier monitors its own inventory levels so that it may maintain inventory levels above a desired level. Accordingly, *Rose* individually or in combination with *Pitchford* and *Takriti* fails to teach or suggest at least "characterizing, by the supplier, nature of growth of the customer's usage of the commodity" and "determining, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time of determination of the price," as recited in claim 23. Therefore, *Rose* does not remedy the deficiencies of *Pitchford and Takriti.*

For at least these reasons, claim 23 is not obvious under the proposed combination of *Takriti* in view of *Pitchford* in view of *Rose*, and the rejection should be withdrawn.

f. Independent Claim 24

As presented in independent claim 24, Applicant claims:

> A price determination device comprising a processor executing a program to determine a price at which a supplier provides a commodity to a customer, the program being operable to cause the processor to:
> ***(a) receive, by the supplier, input characterising nature of growth of the customer's usage of the commodity;***
> (b) receive, by the supplier, input specifying the commodity required by the customer;
> (c) receive, by the supplier, input comprising notification of the use of a quantity of the commodity by the customer; and
> ***(d) determine, by the supplier, a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the***

nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time.

(Emphasis added).

Applicant respectfully submits that independent claim 24 is allowable for at least the reason that *Takriti* in view of *Pitchford* in view of *Rose* does not disclose, teach, or suggest at least to "receive, by the supplier, input characterising nature of growth of the customer's usage of the commodity" and "determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time," as recited in claim 24.

For example, *Takriti* describes that a schedule of operation for an electrical power generating unit or plant is determined by considering forecasts of how much load is to be placed on the plant by customers; physical and operational properties of power generating units; predictions of trading prices for electrical power; fuel prices and its availability that is used by power generating units to produce electrical power. *See* col. 7, lines 19-35. Based on this information, an operating schedule is produced for a power generating unit telling a unit manager how much and what type of fuel to use and how much to burn each hour of the week. "What distinguishes our tool is that it allows the user to incorporate risk, through predictions of the load and fuel prices, and uses these predictions to create optimal schedules." *See* col. 8, lines 43-65.

Therefore, *Takriti* describes a system or process provided by a supplier that computes an operational schedule for the supplier based on an analysis of fuel consumed by the supplier's plant, prices at which power may be sold from the supplier's

plant, and load requirements placed on the supplier's plant. In this analysis, it is noted that a characterization of a customer's usage of power supplied by the supplier is not made; a determination of a price for a quantity of power requested by a customer is not made; and a level of commercial risk is not determined for a customer which is a basis for determining the price for a quantity of power specified by the customer.

Accordingly, *Takriti* fails to teach or suggest at least to "receive, by the supplier, input characterising nature of growth of the customer's usage of the commodity" and "determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time," as recited in claim 24.

With regard to *Pitchford*, it describes an electronic energy management system that allows a customer or user to view his or her energy usage over a communication network. Accordingly, *Pitchford* individually or in combination with *Takriti* fails to teach or suggest at least to "receive, by the supplier, input characterising nature of growth of the customer's usage of the commodity" and "determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time," as recited in claim 24. Therefore, *Pitchford* does not remedy the deficiencies of *Takriti.*

With regard to *Rose*, it discloses a method of inventory control using electronic sensors so that a supplier is provided up to the minute stock levels of the supplier's inventory. For example, *Rose* describes that the status of a storage rack for a supplier

is monitored and provided to the supplier which enables the supplier to determine the status of its inventory and whether the supplier should reorder supplies to restock its inventory. *See* col. 2, lines 39-52, col. 5, lines 30-49, and col. 7, lines 1-18. As such, *Rose* does not disclose that a customer's usage of commodities are used by a supplier to determine the pricing of a commodity provided by the supplier to the customer of the supplier. Rather, *Rose* describes that a supplier monitors its own inventory levels so that it may maintain inventory levels above a desired level. Accordingly, *Rose* individually or in combination with *Pitchford* and *Takriti* fails to teach or suggest at least "receive, by the supplier, input characterising nature of growth of the customer's usage of the commodity" and "determine a price for the commodity used, the determined price being dependent on the quantity of the commodity used, a level of commercial risk associated with the nature of growth of the customer's usage of the commodity, and an industry average price for the commodity at the time," as recited in claim 24. Therefore, *Rose* does not remedy the deficiencies of *Pitchford and Takriti.*

For at least these reasons, claim 24 is not obvious under the proposed combination of *Takriti* in view of *Pitchford*, and the rejection should be withdrawn.

CONCLUSION

For at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned agent at (770) 933-9500.

Respectfully submitted,

Charles W. Griggers
Reg. No. 47,283